

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRANSPORTES NAVIEROS Y
TERRESTRES, S.A. DE C.V.,

Plaintiff,

07 CV 3076 (LAP)

-against-

FAIRMOUNT HEAVY TRANSPORT N.V.,

Defendant.

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DECLARATION OF ARTURO ARISTA

1. My name is Arturo Arista Garza; I was born in Mexico City, Mexico on 3rd November 1973. I attended the Instituto Tecnológico Autónomo de México (ITAM) School of Law, graduating in May 1997, and have been admitted to the bar in the whole Mexican Republic since 16 December 1998. I have been a partner at the law firm of Garza Tello y Asociados, S.C. since January 2002. A true and correct copy of my curriculum vitae describing my employment and educational background is attached hereto as Exhibit 1.
2. This Declaration is submitted in support of Defendant Fairmount Heavy Transport N.V.'s Motion to Vacate the Attachment.
3. According to the Plaintiff's Verified Complaint, a criminal proceeding has been filed against defendant in a Court of law in Mexico to assert its legal rights of redress for the wrongful arrest of its vessel.
4. The above cited Plaintiff's arguments are false and misleading in various ways and following I explain why:

5. (a) Criminal Complaints are not filed in Courts of law in Mexico. Under Mexican law, if a party considers that a crime has been committed against it, it will file a complaint at the District Attorney's Office (DA). The complaint is a narration of a series of events which "could" be considered a crime. The DA will make investigations such as taking statements of the involved parties or requesting documentation in order to decide if it will prosecute the case, that is, if a Criminal Action will be commenced or not.

6. (b) An alleged wrongful arrest of a vessel in a foreign country would not be considered as a crime under Mexican law. Damages and consequential damages that derive from such alleged wrongful arrest should be sought in a Commercial Court of Law and not through a criminal complaint.

7. (c) A District Attorney in Mexico would have no jurisdiction for an alleged crime that took place in a foreign country.

8. (d) In more than twelve (12) years of experience in shipping law I have seen that criminal complaints are filed in respect to maritime claims due to the fact that it is easier and simpler to obtain the temporary detention of a vessel, even if in the end there are really no merits to support the accusation. It is very hard to obtain an arrest order against a vessel through a Commercial Court proceeding since only original or authenticated certified documents are admitted as evidence and the process lasts many days. No such formalities are required by the DA and therefore a quick detention can be easily be reached. Filing a complaint in a DA's office gives the DA the right to request the Harbor Master not to allow the vessel to sail until the DA finishes the investigations that it deem appropriate for a possible crime that had been committed. In the meantime, the detention of the vessel is

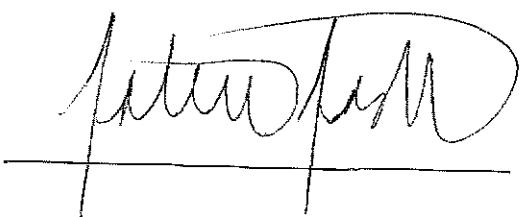
costing money to their operators and therefore there is more pressure to settle a claim or provide some kind of guarantee such as an Letter of Undertaking.

9. (e) I have not been provided with a copy of the criminal complaint filed by the Plaintiff but criminal proceedings are certainly not the appropriate manner to assert alleged legal rights for a an alleged wrongful arrest since except for few crimes, if a party is found guilty, they would be incarcerated and subject to the payment of a specific fine established in the Criminal Court, but no money would be reimbursed to the affected party, in this case the Plaintiff.

10. (f) Up to this date, no criminal action is pending in Mexico in respect to the facts described by the Plaintiff in its Verified Complaint, that is, the DA has not prosecuted the Plaintiff's false allegations.

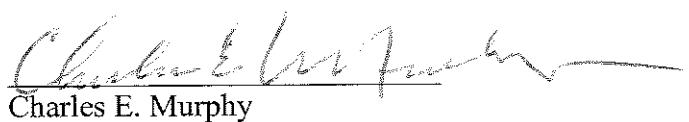
I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed on this 2nd Day of May 2007

A handwritten signature in black ink, appearing to read "Peter D. M.", is written over a horizontal line. The line is preceded by a short vertical line on the left side.

AFFIRMATION OF SERVICE

I hereby certify that on May 3, 2007, a copy of the foregoing was filed. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF system.



The image shows a handwritten signature in black ink, which appears to read "Charles E. Murphy". The signature is fluid and cursive, with some variations in line thickness.

Charles E. Murphy